

United States District Court
Southern District of Texas
FILED

JUL 16 1996

Michael N. Milby, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
DIVISION

ELIZABETH ANN ROBINSON
Plaintiff

VS.

VIRGINIA AVA CHERNITSKY
INDIVIDUALLY AND AS NEXT
FRIEND AND CUSTODIAN
FOR MARY CHRISTINE CHERNITSKY
AND PETER CHERNITSKY,
MINORS
Defendants

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C.A. No. H-94-3077

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
ENTERED

JUL 19 1996

Michael N. Milby, Clerk

ORDER

This Court signed and entered a Final Judgment in the above referenced and numbered cause on April 21, 1995. Following the entry of that Final Judgment, the Plaintiff, Elizabeth Ann Robinson, filed a Motion in Aid of Judgment pursuant to Rule 70, Federal Rules of Civil Procedure, which motion requested that the Court (1) approve a proposed amended trust instrument, (2) order the execution of an amended trust agreement, and (3) approve the payment of attorney's fees for the amendment of the trust from a \$50,097.81 deposit made to the registry of this Court on June 18, 1995. On July 16, 1996, the parties appeared before the Court, presented evidence, announced various agreements, requested that the Court dispose of the Rule 70 motion by issuing an order, and filed, as Exhibit A, a document entitled "Amendment to and Restatement of Trust Agreement" the ("Restated Trust"), evidencing their agreement with regard to the amendment of a trust that was the subject of Plaintiff's Motion in Aid of Judgment. All parties have agreed, and have requested that the Court approve "the

Restated Trust." The parties have represented to the Court that attorneys' fees of \$42,749.37 should be paid to Elizabeth Ann Robinson in accordance with provisions of paragraph I of the Settlement Agreement from funds on deposit in the registry of the Court. The Court has further heard evidence, and the parties have agreed, that attorneys' fees and accounting fees have been paid by Elizabeth Ann Robinson, Trustee, and that an accounting fee in the amount of \$4,587.75 is payable to Russell Harris, C.P.A., which Elizabeth Ann Robinson, Trustee, is directed to pay from the 1996 lottery proceeds, charged to each beneficiary's share *pro rata* as defined in the Settlement Agreement. Bruce Locke has incurred *ad litem* fees for his services on behalf of Mary Christine Chernitsky and Peter Chernitsky in the amount of \$1,000.00 and has requested that such fees be paid equally from the 1996 lottery proceeds allocated to each of Mary Christine Chernitsky and Peter Chernitsky. The Court finds that the "Restated Trust" (Exhibit A) complies with the Settlement Agreement; payment of \$42,749.37 as attorneys' fees for amendment of the trust should be paid *pro rata* by trust beneficiaries other than Elizabeth Ann Robinson in accordance with their respective shares from those funds on deposit in the registry of this Court; accounting and attorney fees previously paid by Elizabeth Ann Robinson, Trustee should be approved; accounting fees to Russell Harris, C.P.A., in the amount of \$4,587.75 should be paid *pro rata* by the beneficiaries of the trust according to their respective shares; the resignation of Elizabeth Ann Robinson as trustee should be accepted upon distribution of the 1996 lottery proceeds to each beneficiary and acceptance of a successor trustee as provided in the document titled "Conditional Resignation of Trustee and Conditional Acceptance of Successor Trustee", filed with the Court as Exhibit B; and that *ad litem* fees of \$1,000.00 should be awarded to Bruce Locke for his reasonable and necessary services as attorney *ad litem*. Accordingly; it is

ORDERED, that Exhibit A, the document entitled "Amendment to and Restatement of Trust Agreement" the ("Restated Trust") is hereby approved; it is further

ORDERED, that the Clerk of this Court shall forthwith pay those funds on deposit in the registry of this Court in the original principal sum of \$50,097.81, plus accumulated interest to Crain, Caton and James, Trustee, 3300 Two Houston Center, 909 Fannin Street,

Houston, Texas 77010 Attention: Helen B. Wils, and from those proceeds Crain, Caton and James, Trustee is directed to pay \$42,749.37 forthwith to Olney G. Wallis, Trustee on behalf of Elizabeth Ann Robinson, as attorneys' fees in accordance with the provisions of the Settlement Agreement, and remit the balance to Ava (Chernitsky) Carter, Mary Christine Chernitsky, Peter Chernitsky, and Ronald J. Waska, P.C. *pro rata* according to the interest each has in such funds; it is further

ORDERED that Elizabeth Ann Robinson, Trustee, shall pay from the 1996 Texas Lottery proceeds \$1,000.00 to Bruce Lock as *ad litem* fees, such fees chargeable equally to the shares of Mary Christine Chernitsky and Peter Chernitsky; it is further

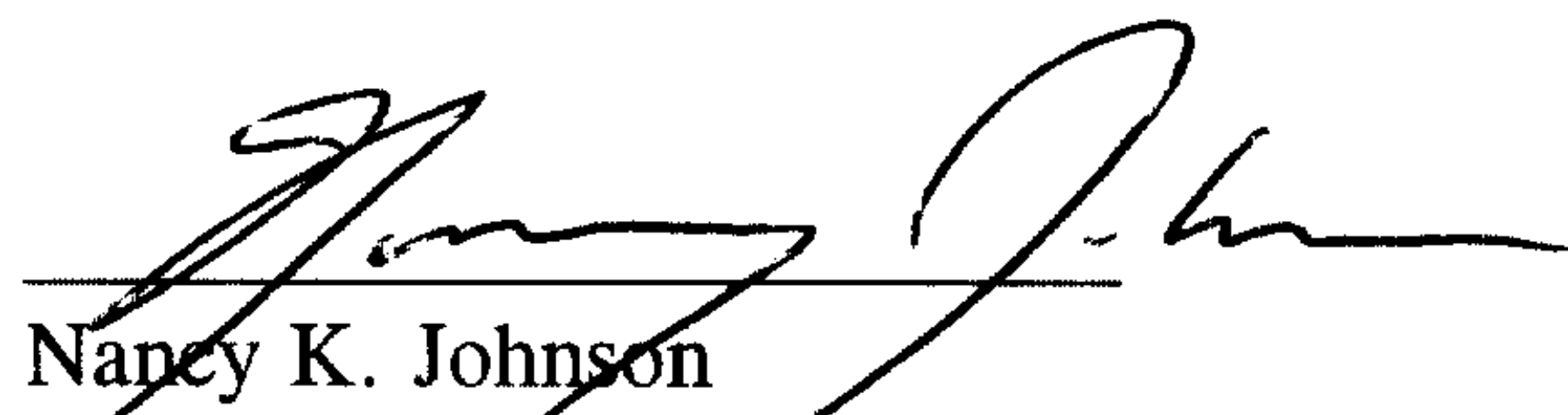
ORDERED that Elizabeth Ann Robinson, Trustee, shall pay from the 1996 Texas Lottery proceeds \$4,587.75 to Russell Harris as accounting fees, such fees chargeable to the share of each beneficiary as defined in the Settlement Agreement; it is further,

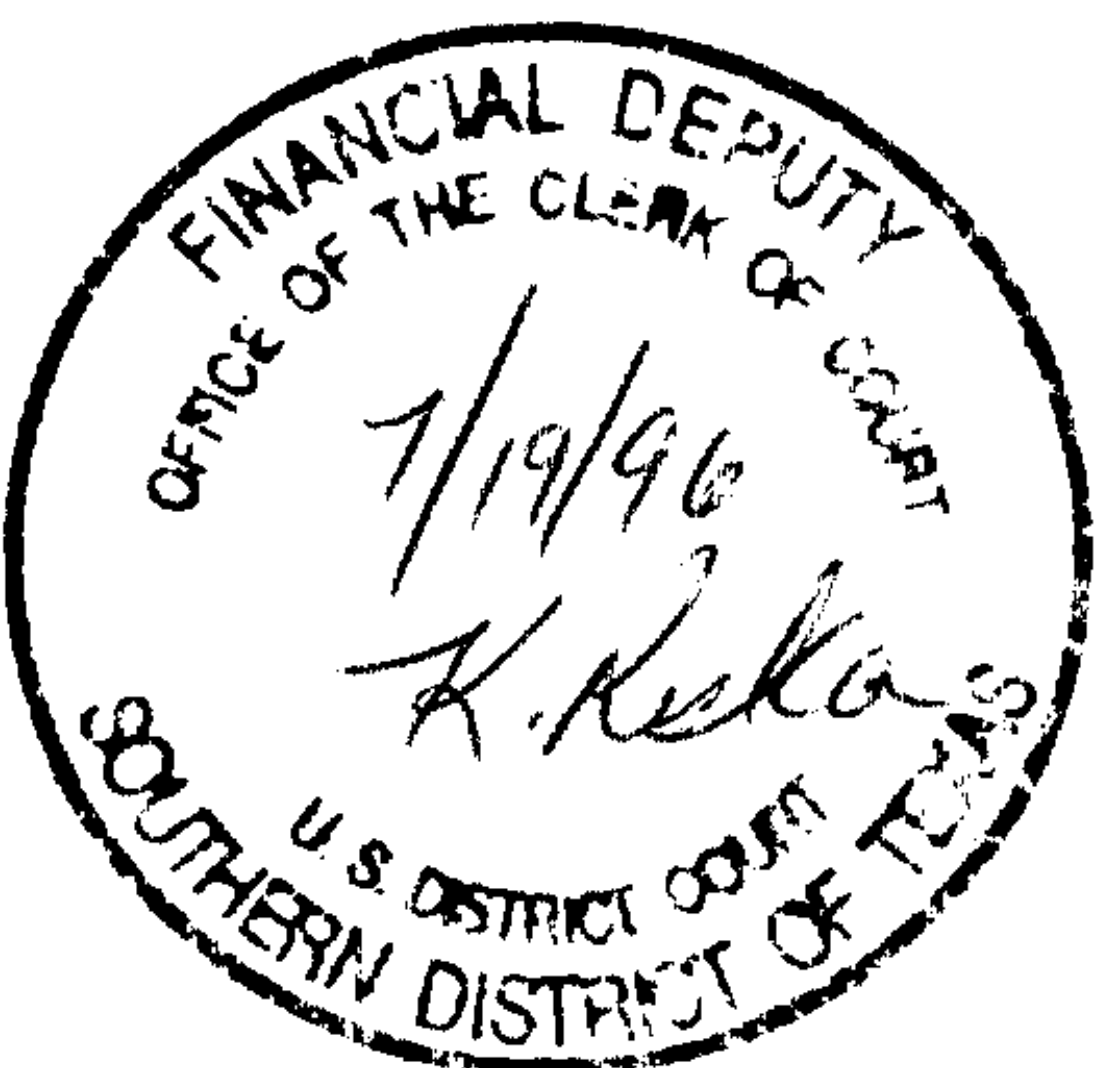
ORDERED that Elizabeth Ann Robinson, Trustee shall distribute the 1996 Texas Lottery payment shares to each beneficiary as defined in the Settlement Agreement, less any charges approved in this Order by the close of the business day on the day following the entry of this order, and upon such distribution all prior payments of fees on behalf of the Elizabeth Ann Robinson Trust are approved, and the conditional resignation of Elizabeth Ann Robinson, Trustee is accepted; it is further

ORDERED that any relief not specifically granted by this Order is denied.

Costs are taxed against the party who incurred the same.

Signed at Houston, Texas this 16th day of July 1996.


Nancy K. Johnson
United States Magistrate Judge

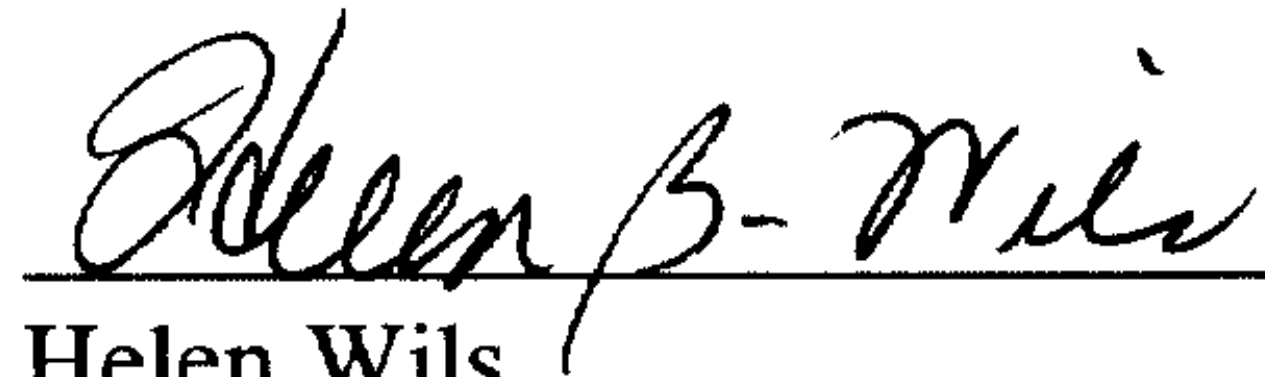


APPROVED AND ENTRY REQUESTED



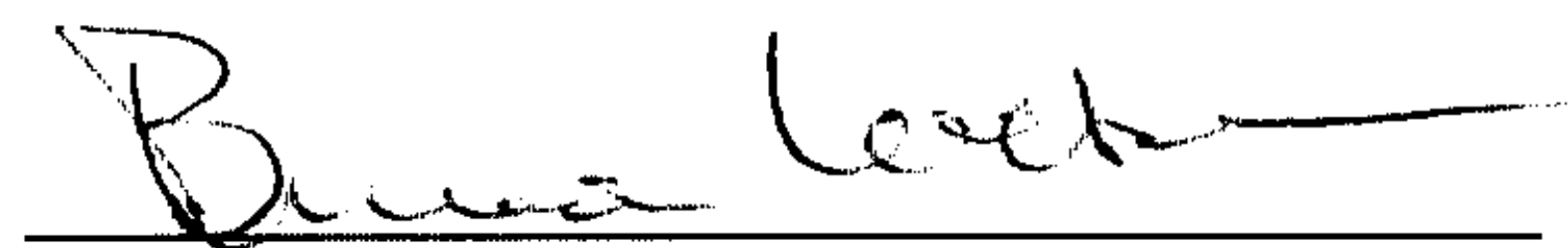
Olney G. Wallis

Attorney for Elizabeth Ann Robinson



Helen Wils

Attorney for Ava (Chernitsky) Carter



Bruce Locke

Ad Litem for

Mary Christine Chernitsky
and Peter Chernitsky